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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

MOISES ROSALES,

Defendant and Appellant.

F057219

(Super. Ct. Nos. 08CM2345 & 08CM2965)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Kings County. James T. LaPorte, Judge.

Rita Barker, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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\*Before Levy, Acting P.J., Cornell, J., and Dawson, J.

On August 16, 2008, appellant, Moises Rosales, entered a JCPenny store in Hanford and was seen by a worker taking items off a shelf and handing them to a woman. After the couple walked into the luggage department, the worker saw Rosales carrying a backpack and the woman a large bag. Rosales dropped the backpack and walked out of the store with the woman without paying for anything.

On August 17, 2008, at approximately 12:00 a.m. Hanford Police Officer Frank Martinez arrested Rosales at a local bar. During a postarrest search, Martinez found a small amount of methamphetamine and a glass pipe with white residue and a burnt edge. Rosales admitted that he stole the shirt he was wearing from JCPenny's (case No. 08CM2345).

On October 5, 2008, a loss prevention officer at a Mervyn's store in Hanford saw Rosales walk into the children's department and select several items. Rosales placed these items in a duffel bag he removed from the front of his shirt. Rosales then went to the men's department and selected a hat and some shoes. He left the store and was eventually detained by two security officers. During a postarrest interview, Rosales stated that he went to Mervyn's to get clothes for his children. (Case No. 08CM2965.)

On October 31, 2008, the district attorney filed an information in case No. 08CM2345 charging Rosales with possession of methamphetamine (count 1/Health & Saf. Code, § 11377, subd. (a)), second degree burglary (count 2/Pen. Code, § 459), possession of narcotic paraphernalia (count 3/Health & Saf. Code, § 11364), and felony failure to appear (count 4/Pen. Code, § 1320, subd. (b)). The information also alleged a prior prison term enhancement and that Rosales had a prior conviction within the meaning of the three strikes law (Pen. Code, § 667, subd. (b)-(i)).

In case No. 08CM2965, the district attorney filed an information charging Rosales with second degree burglary. This information also alleged a prior prison term

enhancement, an on bail enhancement (Pen. Code, § 12022.1), and that Rosales had a prior conviction within the meaning of the three strikes law.

On November 24, 2008, Rosales pled guilty to second degree burglary in case No. 08CM2965, and guilty to possession of methamphetamine and second degree burglary in case No. 08CM2345. Rosales also admitted the three strikes law allegations. In exchange for his plea, the remaining counts and enhancements in both cases were dismissed.

On January 9, 2009, the court sentenced Rosales to an aggregate term of eight years eight months: the upper term of three years on his possession of methamphetamine conviction in case No. 08CM23455, doubled to six years because of Rosales's strike conviction, a consecutive 16-month term on his burglary conviction in that case, one-third the middle term of two years, doubled to 16 months because of Rosales's three strikes conviction; and a consecutive 16-month term on his burglary conviction in case No. 08CM2965, one-third the middle term of two years, doubled to 16 months because of Rosales's strike conviction.

Rosales's appellate counsel has filed a brief which summarizes the facts, with citations to the record, raises no issues, and asks this court to independently review the record. (*People v. Wende* (1979) 25 Cal.3d 436.) However, in a letter filed on October 15, 2009, Rosales appears to complain that defense counsel did not file a motion to strike his prior strike conviction, he asks us to review the police report regarding how they found the methamphetamine on him, and he complains that the probation report erroneously indicates he did not successfully complete his parole.

Rosales's complaint regarding defense counsel's failure to file a motion to strike his prior strike and his complaint that his probation report contains information he claims is inaccurate raise an ineffective assistance of counsel issue. "[A] claim of ineffective assistance of counsel is more appropriately raised in a petition for writ of habeas corpus

[citation] where ‘relevant facts and circumstances not reflected in the record on appeal, such as counsel’s reasons for pursuing or not pursuing a particular trial strategy, can be brought to light to inform the two-pronged inquiry of whether counsel’s “representation fell below an objective standard of reasonableness,” and whether “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” [Citation.]’ [Citation.]” (*People v. Tafoya* (2007) 42 Cal.4th 147, 196, fn. 12.)

Here, the relevant facts and circumstances underlying defense counsel’s failure to move to strike Rosales’s prior strike conviction and his failure to object to information in the probation report that Rosales claims was inaccurate are not reflected in the record. Thus, these issues are more appropriately raised in a petition for habeas corpus.

Further, Rosales’s request that we review the police report regarding the methamphetamine found on him suggests that Rosales is challenging the sufficiency of the evidence to support his possession of methamphetamine conviction. To the extent he is, Rosales waived this issue through his guilty plea. (*People v. Lobaugh* (1987) 188 Cal.App.3d 780, 785 [errors relating to the sufficiency of the evidence are waived by a defendant’s guilty plea].)

Further, following independent review of the record we find that no reasonably arguable factual or legal issues exist.

The judgment is affirmed.